Position Paper on The Sanctions of The Supreme Council for Media Against Al-Masry Al-Youm
Newton Trial
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Content

Introduction
What has happened? From Understanding to The Maximum Sanction
What Is Waiting for Al-Masry Al-Youm?
Conclusions; What to Extrapolate from the Council’s Decision
Introduction

On April 21, 2020, the Supreme Council for Media has imposed a series of sanctions on the privately-owned newspaper, Al-Masry Al-Youm. Nine sanctions have been imposed on the journal, its editor-in-chief, and its owner. These sanctions have ranged from a financial penalty, a disciplinary investigation by Syndicate of Journalists, and a criminal investigation by the public prosecution. Also, blocking a section of the newspaper in both electronic and paper editions, and banning its representatives from media appearances. All the sanctions mentioned above were because of a series of articles on Sinai, written by the newspaper’s owner, Salah Diab.

AFTE unequivocally denounces such sanctions that the Supreme Council for Media has imposed on Al-Masry Al-Youm, its website, and on the newspaper’s editor-in-chief/founder/columnist/Egyptian businessman, Salah Diab.

AFTE’s position is based on the fact that the series of articles fall within the ambit of Freedom of Expression enshrined in the Egyptian Constitution and International Covenants. Since the Freedom of Expression can not be limited to either the socially accepted and palatable thoughts or pro-government attitudes, Rather, it extends to protect ideas that some may consider them strange, shocking, or abnormal. In contrast, the socially accepted opinions do not need such protection.

Hence, AFTE calls upon the Supreme Council for Media to review and rescind those sanctions, and it also calls for a reconsideration of the banning and blocking measures that the Council has resorted to restricting those who have different or opposing opinions.

AFTE refers to Article (8) of the Law N. 180/2018, on the Regulation of Press and Media and the Supreme Council for Media. It states that “opinions or valid information by journalists and media workers shall not be a reason for questioning…”

The paper at hand reviews the circumstances of the investigation with Al-Masry Al-Youm newspaper.
What has happened? From Understanding to The Maximum Sanction

This incident goes back to mid of April when the Supreme Council for Media summoned Al-Masry Al-Youm’s legal representative to investigate a series of articles on Sinai in the Wajadtoha column (means Found It in Arabic). It is author-signed under a pseudonym (Newton), which later turned out to be the newspaper owner and businessman, Salah Diab.

Four days after the summons, the Council’s head, Makram Mohamad Ahmad, stated, “The article had raised many provocative questions, and it is hard to find specific, unequivocal answers for them.” He also added, “The author has left much room for people to question many things.”

Although his negative impression, the Council’s head affirmed that the articles would not require sanctions against the newspaper, only a reprimand. In a telephone interview on a TV show, Ahmad said regarding the reason behind the summons: “I do not think it’s a serious violation, but we must have a role in revealing the truth, not punishing people...We validate facts more than investigate people. The goal is neither impede people’s thoughts nor try their intentions. We are more into exploring the meaning of this article to clarify it for the public.”

This open-minded attitude was not only by the Council’s head, but President Al-Sisi also commented on the articles during the opening of a project, on April 22, celebrating the Sinai Liberation Day. He said: “There is an article on Sinai and its development potentials. I was hoping that if anyone wants to discuss such an issue, he has to be first aware of what we are accomplishing in Sinai. Through the last six years, we spent 600 billion EGP on Sinai development, although Sinai represents only 6% of Egypt.”... “Any views about Sinai issues are appreciated and worth consideration.”

This is how Al-Sisi interacted with the article. He didn’t make any accusations or question the patriotism of the article writer, his loyalties, intentions, or goals.

However, such an open-minded attitude towards the articles didn’t last long. The Council position suddenly changed from facts verifications to investigating and questioning the newspaper’s moralities, professionalism, credibility.

On April 21, The official website of the Council posted a statement that “The Complaints Committee of the Supreme Council for Media conducted an investigation, last Tuesday, for four hours with Al-Masry Al-Youm’s officials about Newton’s articles. Salah Diab, the author of the article, Dr. Abdel-Moneim Said, Board Chairman, Abdullatif Al-Manawi, Editor-in-Chief, and the legal representative of the newspaper, attended the investigation. Then, the committee held a plenary meeting, to review the situation and prepare recommendations for presenting them to the Council, to take the appropriate decision in this regard.
Later on the same day, The Council has issued a decision No. 16/2020. The decision imposed a set of measures and sanctions on the newspaper, its editor-in-chief, and the columnist. The penalties came harsh, indicating the gravity of the violation, according to the Council view.

The decision came with prolonged, unusual reasoning in comparison with most of the previous Council's decisions. Still, it did not mention legal provisions that penalties were based on against the newspaper, its editor, and columnist.

In that case, AFTE has consulted the Law N. 180/2018, on the Regulation of Press, Media and the Supreme Council for Media, and also reviewed the Sanctions List No.16/2019. We can say that the decision is based on several articles in the Law and the List.

The measures and sanctions stated in the decision came in four categories;

- **First, the sanctions against the journal**
  
The newspaper is required to publish an explicit apology, on paper and online edition, to the public for the violations within three days,
  
The newspaper is obligated to remove the infringing content from its website,
  
The newspaper has to pay a fine of 250000 EGP,
  
The newspaper is required to ban the section where it published the infringing articles in for three months, in the paper edition,
  
The newspaper is required to ban the section where it published the infringing articles in for three months, on its website.
  
These penalties are based on Articles N. 4, 22, 94 section (2) (3) of Law 108/2018, and also Articles N.9, 14, 16, 17, 23 of the Sanctions List.

- **Second, the sanctions against the columnist**
  
The ban from media appearance, following the same articles of the Law and the List mentioned above.
• Third, the criminal referral

The Council has decided to refer the incident to the General Attorney to investigate the criminal aspect. The referral is based on Article 96 of Law 180/2018, and also Article 13 of the Sanctions List.

In this context, AFTE refers to Article 28 of the same law, which gives the defendant the right to use a defense counsel to represent him before authorities without coming in person, in case of initiating criminal prosecution for misdemeanors committed by Press or Media. Also, Article 29 prohibits custodial sentences regarding the infringements of publishing/publicity, except for the crimes of incitement to violence, discrimination, or disgracing individuals. This article is an activation for the second paragraph of the Constitution Article (71).

• Fourth, the sanctions against the editor-in-chief

The Council decided to refer the editor-in-chief to disciplinary in the Journalists’ Syndicate, The ban from media appearance, until the end of disciplinary procedures.

These penalties are based on Articles 18, 94 section (4) of Law 180/2018, and also the Articles 8, 27 of the Sanctions List.

Imposing sanctions on the editor-in-chief has raised many questions about his responsibility regarding the published content. So, consulting the concept of joint liability in the law can elaborate answers concerning this matter.

Joint liability is one of the controversial issues, as it has many societal and legal debates. On July 15, 2006, former President Mubarak issued Law 147/2006 to amend some provisions of the Egyptian Penal Code. Article 6 of this law states: “Two new provisions numbering 200 bis and 200 bis (a) will be added to the Penal Code. The latter stipulated:

“The legal person shall be jointly responsible with his employee convict, for the fulfillment of the compensation in the crimes committed by the legal person by newspapers or other means of publication. The legal person is a joint liable for fulfilling fines in case of crimes committed by the editor-in-chief or responsible editor. The responsibility of the editor-in-chief or his representative to oversee the publication is a personal responsibility. Any of the crimes referred to in the previous paragraph shall be sanctioned with a fine of no less than five thousand pounds and not exceeding ten thousand pounds if it is proven that the publication result from the failure to supervise.”
It is noteworthy that the journalist, Mahmoud Mostafa Bakry, challenged the constitutionality of Article 200 bis (a) before the Constitutional Court, but the latter rejected the lawsuit and ruled the constitutionality of the article, in Case No. 139 of 29 Constitutional Judicial.

There are slight changes regarding the joint liability of the editor-in-chief in the Law of Media and Press Regulation. According to Article 110 of the Sanctions Chapter which articulates:

“The natural person responsible for the legal person shall be punished by the same sanctions imposed on the legal person for violating Law 180/2018 provisions. Also, the head of the section, where the infringing material published, is responsible if it is proven that he is aware of it, and among his job duties to know about it, or if he failed to fulfill his job duties, which may have contributed to the crime. In all cases, the legal person is jointly liable for the fulfillment of financial penalties or compensations.”

What Is Waiting for Al-Masry Al-Youm?

On one side, the Law 180/2018 and the Sanctions List grants the right to appeal against the Council’s decision. The last paragraph of Article 94 stipulates the freedom of the concerned parties to challenge those sanctions or measures before the Administrative Court, and the appeal is not accepted until after a grievance is submitted to the Supreme Council. Also, Article 28 in the Sanctions List states the right of the concerned parties to file a complaint with the Council regarding the penalties or measures ordered by it; within fifteen days from the informing date, the grievances submitted after this period are considered unacceptable. Moreover, Article 29 of the List obligates the Council to issue a decision to form the Complaints Committee, its forming conditions, its convention, the number of its members, and its voting mechanisms on decisions. Knowing that, in September 2019, the Council’s head had already issued decision No. 17/2019 on the regulations of forming committees in the Supreme Council for Media and its procedural system.

On the other side, following Law 180/2018 and the Sanctions List, Al-Masry Al-Youm, its website, and its editor-in-chief may face severer sanctions in case of non-compliance to the Council’s punitive decision, or return to commit same acts that the Council considered it as an infringement. Article 22 of the same law stipulates that the delegated authority shall require from the editor-in-chief or the director, and without consideration, to publish a correction of published or broadcasted material. The correction shall be published within three days of the request reception, or in the first upcoming issue of the newspaper, whichever is earlier, and according to the assigned printing dates. Also, Article 101 of Sanctions Chapter punishes every editor-in-chief or responsible
manager of any publication, media, or website, who violates the provisions of Article 22, with a fine no less than 50000 EGP and no more than 100000 EGP. Moreover, in the event of any press/media/website committed a grave infringement, or if the requirements of the national security are harmed, according to the Council’s notion, or in case the infringing material is republished in any way that circumvents the Council’s decision. Article 6 of the Sanctions List granted the Supreme Council the authority to block websites or to revoke the broadcasting license, temporarily or permanently, with consequences. Committing such actions is considered a violation of one of the license essential provisions. Accordingly, it allows the Council to suspend or revoke the license, provided that the Council notifies the violating party of the aspects of the infringement, and gives it an appropriate period for correction, within a period of no less than a week and no more than a month. Article 10 of the Sanctions List stipulates that if the same violation is committed again, the Council has the right to double the penalty, provided that sanctioning decisions are taken into consideration regarding the license renewal. Also, Article 24 states that if the violating party does not remove the infringing content within the specified period, it is obliged to pay a fine of 100000 EGP or the equivalent value in foreign currency. As well as the Council itself shall remove the infringing content on the violating party expense.

Conclusions; What to Extrapolate from the Council’s Decision

AFTE believes that the Council considers the newspaper’s actions grave breaches. As the Council has imposed the most severe sanctions stipulated by Law 180/2018 and the Sanctions List regarding this incident, except for two penalties; the permanent banning or blocking of the newspaper, and the license revocation. It is worth mentioning that the sanctions imposed on Al-Masry Al-Youm are the harshest and the most since the Sanctions List issuance on September 13, 2019.

Therefore, AFTE reaffirms that the Sanctions List has expanded the Council’s authority regarding imposing sanctions on press and media institutions according to ambiguous, generalized phrasing of the breaches, which makes any published material a reason for sanctioning.

It worth noting that the Council substantiated its decision with lengthy moral judgments, speculation of the writer’s intentions, trying his thoughts, and questioning his patriotism and loyalty. AFTE considers such attitude very serious and establishes an unprofessional approach in addressing a journalistic work that is nothing more than an opinion article tries to discuss non-mainstream and controversial ideas. The Council said, to give effect to the decision:
“This series of articles has given the Council pause for thought. The Council cannot be able to describe the extent of the lack of patriotic responsibility or to know the real purpose of such articles. The articles said that Sinai had witnessed more developments during the occupation 1967-1973 than the Egyptian governments have accomplished all years after. What the author was aiming for with such thoughts? Doesn't he aware of all efforts and achievements that have been made by the Egyptian state regarding Sinai development? Does he overlook that the development efforts in Sinai haven’t stop despite the Egyptian state fight against terrorism?”

The Council also stated, “these articles are a blunt breach of the Constitution and its principles committed by the newspaper.” However, the Council hasn’t mentioned what precisely are these violated constitutional principles. Moreover, the Council went on to list moral judgments and obvious suspicions, not just about the writer’s intentions, goals, but also the newspaper’s agenda. Also, it relied on rhetorical expressions that have no apparent legal reference in any of the Egyptian laws. As follows:

“The Council believes that this systematic campaign is a grave, unprofessional act, and it requires punishment and taking the necessary measures against it. This campaign represents a misleading model of exercising Freedom of Expression. It targets the demolition, not the building; it harms the homeland and doesn’t put its interests first; it encourages the division over cohesion and solidity. The newspaper hasn’t realized it is axiomatic that the guaranteed Freedom of Expression can’t be a shield for those who violate the Constitution, and who destroy the society’s values and principles. Freedom of Expression should be framed by society’s values, traditions, and historical heritage. Freedom of Expression should be protected if it only stays in the legitimate boundaries and causes no harm to others or society. It must not be any protection for such opinions that has no values, and that aims for divisions and hatred. Which, eventually, affect the unity of the country and pose threats to National Security.”

AFTE asserts that Thoughts shall be encountered by nothing but other thoughts and more information disclosure, to enlighten the public for a better position from any ideas put forward. Speaking of information disclosure, AFTE draws attention to a crucial crisis regarding access to information on the border areas, since the Egyptian state considers such information very sensitive. Ismail Alexandrani, the researcher and journalist on Sinai issues, is a living example of this crisis. Alexandrani is serving a ten-year prison sentence in compliance with the ruling of the Criminal Court of North Cairo in case No. 18/2018 because of his journalistic and research work on Sinai issues. He is accused of spreading false news, joining a group founded in violation of the law, and broadcasting a military secret.
The Parliament’s constant delay of the FOI law issuance has aggravated the Freedom of Information crisis. Even though the Supreme Council for Media prepared a draft more than two years ago, it is available via the Council’s official website since October 18, 2017. Such a delay makes the Constitutional right on Freedom of Information, articulated in Article 68, inactive till now. AFTE stresses that the absence of such vital information is what makes room for speculations, rumors, and inaccurate news.

Wherefore, AFTE demands the following:

- The Public Prosecution shall suspend any further investigations regarding Salah Diab’s articles and drop the charges against him or the editor-in-chief because of his joint liability for publishing.

- The Supreme Council for Media shall reconsider its arbitrary sanctions decision against Al-Masry Al-Youm newspaper, its editor-in-chief, and its columnist.

- The Egyptian Parliament shall discuss, adopt the FOI law draft soon, before the end of the current convocation since it is the final one before reelection.